

In the
Indiana Supreme Court



Tim BERRY; et al.,)	Supreme Court Cause No.
Appellants,)	49S00-1202-PL- <u>76</u>
)	
v.)	Court of Appeals Cause No.
)	49A02-1202-PL-76
William CRAWFORD; et al.,)	
Appellees.)	Marion Superior Court Cause No.
)	49D10-1106-PL-23491

ORDER

Before us are Appellants “Verified Motion to Transfer Jurisdiction of Appeal before Consideration by the Court of Appeals and Motion to Consolidate,” filed pursuant to Appellate Rule 56(A), and Appellants’ “Verified Emergency Motion to Stay Permanent Injunction.” Appellees timely tendered a response to the Appellants’ Verified Emergency Motion to Stay Permanent Injunction.

This present appeal arises out of the same trial court case as does the appeal in Berry v. Crawford, Supreme Court cause number 49S00-1201-PL-53 (hereinafter “Berry I”). Berry I is an interlocutory appeal, filed under Appellate Rule 14(B)(2), in which Appellants seek appellate review of the trial court’s order denying in part Appellants’ motion to dismiss and holding, in sum, that it did not have jurisdiction to review the House of Representative’s internal discipline when it came to compelling attendance or assessing fines during the 2011 Legislative Session, but it did have jurisdiction to review the manner in which the 2011 Legislative Session fines were collected. On January 27, 2012, this Court, pursuant to Appellate Rule 56(A), assumed jurisdiction over Berry I and granted Appellants’ motion to accept jurisdiction of the interlocutory appeal.

Although this Court assumed jurisdiction over the interlocutory appeal in Berry I, the case proceeded ahead in the trial court as permitted by Appellate Rule 14(H). Additional plaintiffs were permitted to join the case and, through amended complaints, the case was broadened to include claims arising out of fines being assessed during the 2012 Legislative Session. On February 6, 2012, the trial court issued a final judgment that: (a) ordered Appellants “immediately [to] pay all amounts withheld as fines from [Appellees’] salary/per diem compensation due from the 2011 [Legislative] Session, including all applicable pension contributions”; and (b) enjoined Appellants “from taking any action that will result in the withholding of per diem/salary payments or pension contributions, to which the Plaintiffs are otherwise entitled, for the purpose of satisfying the fines for the 2012 [Legislative] Session, and in the future, without compliance with applicable Indiana law regarding wage collection.” The following day, Appellants filed a Notice of Appeal concerning the trial court’s final judgment order, and also filed the motions mentioned in the preceding paragraph. The Clerk of this Court assigned appellate cause number 49A02-1202-PL-76 to this new appeal (hereinafter “Berry II”).

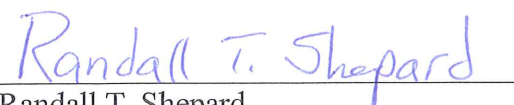
Having considered the above-referenced verified motions and being duly advised, the Court hereby ORDERS AS FOLLOWS:

(1) Appellants' "Verified Motion to Transfer Jurisdiction of Appeal before Consideration by the Court of Appeals and Motion to Consolidate" is GRANTED. Pursuant to Rule 56(A), this case shall proceed in this Court "as if had been originally filed [here]," and shall do so pursuant to the deadlines set forth in the Appellate Rules. The Clerk of this Court is directed to assign a Supreme Court cause number to this appeal, transfer the chronological case summary from the current Court of Appeals cause number to the new Supreme Court cause number, and to consolidate this appeal with the Berry I Supreme Court cause number (namely 49S00-1201-PL-53). Documents filed in the consolidated appeal shall bear the both Berry I and Berry II Supreme Court cause numbers and be noted on the chronological case summaries of both appeals. The deadline for Appellants' brief in these consolidated appeals shall be calculated from the date on which the trial court clerk serves her Notice of Completion of Clerk's Record in Berry II if the transcript has been filed by the time the Notice of Completion of Clerk's Record is issued and filed, or from the date on which the trial court clerk serves her Notice of Completion of Transcript in Berry II if the transcript has not been filed by the time the clerk serves her Notice of Completion of Clerk's Record. See Ind. Appellate Rules 10 and 45(B)(1).

(2) Appellants' Verified Emergency Motion to Stay Permanent Injunction" is GRANTED IN PART AND DENIED IN PART. Specifically, the portion of the trial court's order requiring Appellants' "immediately [to] pay all amounts withheld as fines from [Appellees'] salary/per diem compensation due from the 2011 [Legislative] Session, including all applicable pension contributions" is STAYED until further order of this Court. The portion of the trial court's order enjoining Appellants from withholding the fines from per diem/salary payments or pension contributions, and all other portions of the trial court's order on final judgment, REMAIN IN EFFECT until further order of this Court.

The Clerk is directed to send a copy of this order to the Hon. Margret Robb, Chief Judge, Indiana Court of Appeals; to the Hon. David J. Dreyer, Judge of the Marion Superior Court; to the Hon. Elizabeth White, Clerk of the Marion Superior Court; to Steve Lancaster, Court of Appeals Administrator; to the Supreme Court Administration Office; and to all counsel of record. The Clerk is also directed to post this order to the Court's website.

Done at Indianapolis, Indiana, this 8th day of February, 2012.


Randall T. Shepard
Chief Justice of Indiana